IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

SEAN WRIGHT,)	
Plaintiff,)	
v.) No. 05-4422-CV-	C-SOW
STATE OF MISSOURI, et al.,)	
Defendants.)	

ORDER

On February 28, 2006, the United States Magistrate Judge recommended dismissing plaintiff's claims. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C). No exceptions have been filed.

A review of the record convinces the court that the recommendation of the Magistrate Judge is correct and should be adopted.

Plaintiff, however, has filed a motion for refund of the filing fee. Because plaintiff is a mental patient at Fulton State Hospital, and is unfamiliar with the legal process, the court finds that justice requires the refund of the filing fee which was paid in full. Plaintiff is clearly seeking relief which is not available under 42 U.S.C. § 1983, but rather must be brought via a petition for habeas corpus. Therefore, the Clerk of Court is ordered to send to plaintiff forms for filing a petition for habeas corpus, and to refund the filing fee paid on plaintiff's behalf.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's February 28, 2006, Report and Recommendation is adopted [5]. It is further

ORDERED that plaintiff is denied leave to proceed in forma pauperis and his claims are dismissed, without prejudice, pursuant to <u>Heck v. Humphrey</u>, 512 U.S. 477 (1994). It is further

ORDERED that the Clerk of Court send to plaintiff forms for filing a petition for habeas corpus. It is further

ORDERED that the Clerk of Court refund the filing fee paid on plaintiff's behalf [6].

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: March 15, 2006